

# Religious Freedom Suits Filed Against PA Home Ed Law

by Howard Richman

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This spring, Home School Legal Defense Association (HSLDA) filed Religious Freedom Protection Act (RFPA) suits on behalf of the Newborn and Hankin families against the Franklin Regional S.D. (Westmoreland Co.) and the Bristol Township S.D. (Bucks Co.) claiming that PA's home education law (Act 169 of 1988) substantially burdens homeschoolers' religious beliefs.

These suits are designed to prevent prosecution of these two HSLDA-member families who have decided not to comply with Pennsylvania's home education law. At a talk at the SEARCH Fair on April 23, Attorney Dee Black of HSLDA predicted that one of these suits will eventually wind its way up to the Pennsylvania Supreme Court where the ruling could go either way.

According to Pennsylvania ACLU legislative director Larry Frankel, as quoted by reporter Ben Finley in the Bucks County *Courier Times* on May 5, these suits will fail:

"I'd be surprised if the court agrees," said Larry Frankel, legislative director of the Pennsylvania ACLU. Frankel said if the Hankins and Newborns are successful in their claims of religious freedom, then Satanists could justify not teaching their children to read. He said the court cases would give the Religious Freedom Protection Act a bad name.

"The law doesn't say they can't teach their children x, y and z. The school districts just want some evidence that students are actually being educated," he said. "The school district has a right to expect that something is happening, that their children are not running free all day."

Pennsylvania's Religious Freedom Protection Act of 2002 makes it possible to challenge any law in court that "substantially burdens" a person's religious belief. "Substantially Burden" is defined by the act as any one of the following:

- "Significantly constrains or inhibits conduct or expression mandated by a person's sincerely held religious beliefs,"
- "Significantly curtails a person's ability to express adherence to the person's religious faith,"
- "Denies a person a reasonable opportunity to engage in activities which are fundamental to the person's religion,"
- "Compels conduct or expression which violates a specific tenet of a person's religious faith."

The suit's religious freedom argument is weakened by the fact that the PA home education law specifically has parents write their own educational objectives which "shall not be utilized by the superintendent in determining if the home education program is out of compliance." Not being able to argue that the law prevents teaching of religious beliefs, the suit claims that it violates religious beliefs about the proper relationship between parents and the government. Specifically, the suit states: "according to their religious belief, the civil government lacks jurisdiction to approve or administratively supervise the education they provide." The rest of the suit throws everything against a wall hoping that something will stick -- that the courts will find one or another aspect of the home education law to be unconstitutional.

The suit's privacy argument is especially strong. In recent years, the United States Supreme Court has expanded privacy rights to include abortion and homosexual sex. Courts might indeed expand privacy rights to include homeschoolers' portfolios.

The due process argument is especially weak. The suit claims, "If the superintendent determines that appropriate education is not occurring, the home education must cease." But there are many other people involved, including the evaluator chosen by the parent who makes the initial determination regarding appropriate education, the impartial hearing officer who can overrule the superintendent, and Commonwealth Court who can overrule the hearing officer.

It will probably be 2 or 3 years before anything is decided by the Pennsylvania Supreme Court. Any possible impacts on homeschooling in Pennsylvania will be reported in future issues of this newsletter. If the suit loses, the families now claiming protection under the RFPA will face the choice of complying with the compulsory education law or facing the consequences of non-compliance.